

### SUMMARY

The above Amendment and following Remarks are responsive to the points raised in the April 28, 2004 Office Action. In the Office Action, Claims 1-6 were rejected under 35 U.S.C. § 102 (b) as being anticipated by Benjey. Claims 1, 6-8, 11-15, 17-19, 28 and 29 were rejected under 35 U.S.C. § 102(b) as being anticipated by Simdon, et al. Claims 9 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Simdon et al. Claim 16 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Simdon et al. in view of Schmitt. Upon entry of this Amendment, claims 1, 6, 7 and 28 will have been amended, claims 30-42 will have been withdrawn from further consideration by the Examiner under a restriction requirement, and claims 1-29 will be pending in this application. Entry and consideration of this Amendment are respectfully requested.

### REMARKS

#### Response to the Restriction Requirement:

The claims were subject to a restriction requirement by the Examiner. In the restriction requirement, the Examiner indicated that claims 1-29 were drawn to a fuel intake device for a vehicle and claims 30-42 were drawn to a fuel intake system. On April 23, 2004, Scott Sudderth was phoned by the Examiner and elected Group I with traverse. In the Office Action dated April 28, 2004, the Examiner indicated that Group I and Group II were restrictable as subcombinations usable together. Since the Examiner has full purview to restrict claims and maintain the restriction, the Applicant is allowed only to establish that the restriction imposed is improper. Here, the Applicant avers that the restriction requirement as applied is improper and, if the Examiner persists in applying a restriction requirement in the present application, that the restriction imposed be rewritten to properly clarify the claims. Specifically, the Examiner's

postulation that Groups I and II are subcombinations usable together is unbiased and improper. Groups I and II are not subcombinations usable together in a combination as defined in MPEP 806.05(d). Thus, the burden for establishing a clear reason to imply a restriction requirement to the claims in this application has not been met. Accordingly, in response to the present amendment, the Examiner must show that restriction in the present application is required and supply clear reasoning and rationale for such restriction. Absent such showing, the restriction requirement as applied in the Office Action of April 23, 2004 is improper and should be removed as moot.

**Objections to the Drawings:**

The drawings were objected to as informal with the letters, numbers, and lines of Figures 7A - 9C not being uniform in nature. Formal drawings are being prepared in response to these objections and will be submitted as soon as practicable.

**Rejections Under 35 U.S.C. §§ 102 and 103:**

Claims 1-6 were rejected under 35 U.S.C. § 102 (b) as being anticipated by Benjey. Claims 1, 6-8, 11-15, 17-19, 28 and 29 were rejected under 35 U.S.C. § 102(b) as being anticipated by Simdon, et al. Claims 9 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Simdon et al. Claim 16 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Simdon et al. in view of Schmitt. These claims will be addressed together since they lack common elements as added by the present amendment. Applicant traverses these rejections.

As amended, claims 1, 6, 7, and 28 include that the body portion includes a cover that forms part of an exterior wall of the vehicle. When the cover is manually moved into the open position, the fuel intake passage is in communication with the fuel intake pipe of the vehicle.

The cited prior art does not show such functionality. Specifically, Benjey discloses a hingeable seal that acts as a flapper to seal the nozzle tube into the fuel tank and does not disclose a cover that acts as a part of the exterior wall of the vehicle or manual movement of such a cover from a closed position to an open position to allow communication with the fuel intake pipe of the vehicle. Simdon discloses an electronically controlled valve assembly does not disclose a cover that acts as a part of the exterior wall of the vehicle or manual movement of such a cover from a closed position to an open position to allow communication with the fuel intake pipe of the vehicle. Schmitt fails to make up for the inadequacies of Simdon by failing to disclose a teaching or suggestion to modify Simdon to reach the claimed fuel intake device. Accordingly, the rejections applied to the claims should be removed as overcome and a notice of allowance issued.

#### AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees that may be required for the timely consideration of this Amendment under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment to Deposit Account No. 09-0528.

Respectfully submitted

7/28/04  
Date

Kat Quinalty  
Keats A. Quinalty  
Registration No. 46,426

Customer No. 26158  
WOMBLE CARLYLE SANDRIDGE & RICE  
P. O. Box 7037  
Atlanta, Georgia 30357-0037  
(404) 879-2423 (Telephone)  
(404) 879-2923 (Facsimile)